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No. 79-1157

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

EDWARD J. ROSEWELL, etc., et al.,

Petitioners,

vs.

LA SALLE NATIONAL BANK, TRUSTEE, etc.,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

ARGUMENT

Introduction

It may be helpful to restate the collector's* position in order to focus the various issues which are argued in the taxpayer's brief, and to which this reply is directed. The collector maintains first that §1343(3) jurisdiction is lacking in this case because the subject matter involves a constitutional challenge to the collection of local real estate taxes. As an allied argument, the collector asserts that the complaint fails to allege intentional or purposeful violation of the taxpayer's fourteenth amendment rights with the specificity which this Court has demanded over the years. See, *Snowden v. Hughes*, 321 U.S. 1, 7 (1944). Finally, even if the district court had jurisdiction under §1343(3), and even if the complaint stated a specific cognizable claim of tax discrimination, the taxpayer was accorded a plain, speedy and efficient remedy in state court, and, of course, a federal damage remedy for her federal claims under *Fulton Market Cold Storage Co. v. Cullerton*, 528 F.2d 1071 (7th Cir. 1978), *cert. denied*, 439 U.S. 1121 (1979).

It is signally important that the taxpayer has failed to allege inability to pay the 1977 real estate taxes due on her property. Indeed, the complaint specifically asserts that the taxpayer is ". . . able financially to pay her taxes in full and sue for a refund, albeit at substantial expense, loss and burden." (Comp. Par. 16; A. 9). Irreparable injury is non-existent in a tax case where

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* Petitioners Edward J. Rosewell, County Treasurer and Ex-Officio Collector of Cook County, and Thomas M. Tully, former Assessor of Cook County are the county tax officials who performed duties imposed by the Illinois Revenue Act. Hereinafter they will be referred to as "the collector."

the taxpayer has the funds to pay the tax and, thus, the ability to forestall the loss of the property brought about by the judicial sale procedures of the Illinois Revenue Act. As argued in the initial brief, vital considerations of federalism, comity and equitable restraint require the federal district court ". . . to refrain from interfering with a state's collection of its revenue except in cases where an asserted federal right might otherwise be lost." *Tully v. Griffin, Inc.*, 429 U.S. 68, 73 (1976). Again, it is hard to see how any of the taxpayer's federal rights will be lost where she has available to her (1) the standard Illinois tax remedy; (2) an action under §1983 in state court for damage to her federally protected rights; and (3) a damage action in federal court under *Fulton Market, supra.*

Therefore, whether one focuses upon the congressional policy established in §1341 regarding state remedies, or upon the historic precedential limitations of federal equity,* it is clear that the federal injunction sought by the taxpayer herein is totally unwarranted. The pattern of state and federal real estate tax remedies produced by acceptance of the collector's position herein has the beneficial effect of striking a fair balance among the varied interests presented in the case.

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* In *Matthews v. Rogers*, 284 U.S. 521 (1932) this Court held that:

> If the remedy at law is plain, adequate and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question is involved, Jud. Cod. Sec. 237, *or to his suit at law in the federal courts if the essential elements of federal jurisdiction are present.* (Citations omitted) (Emphasis supplied).

Id. at 526. See also: *Fulton Market Cold Storage Co. v. Cullerton*, 528 F.2d 1071, 1076 (7th Cir. 1978) *cert. denied*, 439 U.S. 1121 (1979).

If a taxpayer cannot meet the statute's condition precedent of tax prepayment, then the Illinois statutory legal remedy is unavailable to that taxpayer. Such a taxpayer would, therefore, be entitled to litigate the valuation claims in equity in state court, and to seek injunctive relief. *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 106-107, 306 N.E.2d 299, 302-303 (1973). If the taxpayer is able financially to pay the taxes in full and seek a refund (Comp., Par. 16; A. 9), then the threat of loss of the real estate is non-existent, and the taxpayer can follow out such state or federal damage remedies as are available and appropriate to repair the monetary damage caused by the alleged violation of the taxpayer's constitutional or statutory rights. The opinion of the court below frustrates this pattern, and sanctions unwarranted federal anticipatory litigation of state tax valuations contrary to the letter and spirit of *Tully v. Griffin, Inc.*, 429 U.S. 68 (1976) and *Trainor v. Hernandez*, 431 U.S. 434 (1977).

I.

THE SCOPE OF JURISDICTION UNDER 28 U.S.C. §1343(3) DOES NOT INCLUDE CASES INVOLVING CONSTITUTIONAL CHALLENGES TO THE COLLECTION OR VALIDITY OF STATE TAXES.* (Reply to Taxpayer's Argument I, Br. at 4-9.)

The collector maintains that §1343(3) does not support jurisdiction of a tax case like that at bar. The focus is

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* Collector's Arguments I and II herein are jurisdictional arguments, and, thus, alternative to the §1341 questions discussed in Arguments III and IV of this Reply Brief. The taxpayer's brief, at 33 n. 28, creates the misleading impression that the collector has taken a position in a pending Illinois tax injunction appeal contrary to Argument IV herein. [*400 Condominium Assn. v. Tully*, No. 78-873 (1st Dist. 1980)] In that case, an appeal in which the taxpayer successfully challenged an assessment as one unauthorized by law, the tax-

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not upon whether the interest asserted is a personal right or a property right, but rather, historically, whether the tax related rights involved herein are "civil rights." This Court held that they were not in *Holt v. Indiana Manufacturing Co.*, 176 U.S. 68, 72 (1900). Moreover, in those portions of the Virginia Bond coupon cases where relief was sought under the Civil Rights Act, jurisdiction was denied. *Carter v. Greenhow*, 114 U.S. 317 (1884) and *Pleasants v. Greenhow*, 114 U.S. 323 (1884). It is important to note that relief in those cases was granted to Virginia Bond coupon holders (1) who brought detinue actions in state court, *Poindexter v. Greenhow*, 114 U.S. 270 (1884); (2) who brought damage actions in federal court premised on federal question jurisdiction, *White v. Greenhow*, 114 U.S. 307 (1884); (3) who brought trespass actions in state court, *Chaffin v. Taylor*, 114 U.S. 309 (1884); (4) and who brought injunctive actions in federal court based on federal question jurisdiction, *Allen v. B & O R.R. Co.*, 114 U.S. 311 (1884). These cases support denial of federal jurisdiction in the case at bar.

More recently the district court in *Czajkowski v. State of Illinois*, 460 F. Supp. 1265 (N.D. Ill. 1977) cited the foregoing cases, and the fact that they were distinguished, not overruled, in *Lynch v. Household Finance Corporation*, 405 U.S. 538 (1972), to support the proposi-

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payer had moved for attorneys fees based in part on 42 U.S.C. §1988. Tully objected on the grounds that the action was not based on federal law, but rather on a provision of the Illinois Condominium Act. The portion of the "Objections" quoted by the taxpayer omits the two cases which were cited to support the assertion, i.e. "See *Lynch v. Household Finance Corp.*, 92 S. Ct. 1113 at 1117 (Fn. 6), and *Czajkowski v. State of Illinois*, 460 F. Supp. 1265 at 1277 (N.D. Ill. 1977)." It is therefore clear that the collector has consistently maintained that, if civil rights jurisdiction does apply to tax cases (as opposed in Arg. I herein), then Illinois courts will hear them (as maintained in Arg. IV herein).

tion that §1343(3) jurisdiction should be denied in tax cases.

The history of the Civil Rights Act clearly indicates that it was enacted to create (1) "a species of tort liability." *Carey v. Piphus*, 435 U.S. 247, 257 (1978); (2) which could be remedied in the federal courts. *Mitchum v. Foster*, 407 U.S. 225, 239 (1972). The need for the law was rooted in the official lawlessness following the Civil War, when certain state courts were effectively closed to black citizens. Nowhere in the legislative history is there any indication that this "trouble" extended to tax matters, or to cases involving the validity or collection of state taxes. As a matter of history, state courts have generally been available to protect rights affected by taxation. See e.g. the Virginia Bond Coupon cases, *Poindexter v. Greenhow*, 114 U.S. 270 (1884) and *Chaffin v. Taylor*, 114 U.S. 309 (1884). The taxpayer's attempt to distinguish this Court's treatment of *Pleasants*, *Carter* and *Holt* in *Lynch* footnote 6 misses the point. There is no question that the footnote correctly and accurately observes that those cases ". . . were consistent with congressional restrictions of federal jurisdiction in this special class of cases and with longstanding judicial policy." *Lynch*, 405 U.S. 542-43 n.6. What the Court did not decide in *Lynch* was the question elucidated in *Czajkowski v. State of Illinois*, *supra*, as to the precedential value of *Carter*, *Pleasants*, and *Holt* on the scope of civil rights jurisdiction in tax cases. Accordingly, the taxpayer's efforts to distinguish those cases in light of *Lynch* must fail.

II.

THE TAXPAYER'S ALLEGATIONS FAIL TO STATE AN EQUAL PROTECTION CLAIM UNDER THE FOURTEENTH AMENDMENT. (Reply to Taxpayer's Argument II, Br. at 9-13.)

The collector maintains that the taxpayer has failed to allege facts which show intentional or purposeful violation of fourteenth amendment rights. At bottom, the equal protection clause is a limitation upon state classifications, and ". . . protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class." *Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946).

This Court has enforced the fourteenth amendment to prohibit state tax systems which have, de facto, established specific, disadvantaged classes. The cases which the taxpayer has cited at page 10 of her Brief (*Raymond*, etc.) are specific examples. It should be carefully noted, however, that those cases all involved corporations, and dealt with a specific problem rooted in the history of the state's taxation of corporate real estate. Prior to the recognition that corporations could constitutionally be treated differently from individuals, states assessed certain types of industrialized corporate real property (i.e., railroads, steel mills, etc.) at full value as usually was required by the state constitution. The difficulty arose when other property, particularly residential property, was often substantially underassessed. When the railroads and steel companies complained about this, the states maintained that their constitutions required "full value" assessments, and that the railroads and steel mills were, indeed, assessed at "full value." This position was often combined with the advice that the corporate complainant take action to see that the other underassessed property was brought up to

full value. See e.g. *Hillsborough v. Cromwell*, 326 U.S. 620, 623-26 (1946); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

The *Raymond* line of cases authorizes relief in such situations, where ". . . the practical effect of the official breach of law is the same as though the discrimination were incorporated in and proclaimed by the statute." *Snowden v. Hughes*, 321 U.S. 1, 9 (1944).

The *Raymond* problem has, of course, been diminished substantially by this Court's recognition of the states' power to make legitimate classifications reasonably based upon the corporate form of the taxpayer. *Lehnhausen v. Lake Shore Auto Parts*, 410 U.S. 356 (1973).

The taxpayer asserts that the foregoing distinction is "spurious" and that "There is no practical difference between a system which deliberately assesses railroad or coal or bridge companies on a discriminatory basis in violation of uniformity requirements and a system which with like deliberateness discriminates against taxpayers such as the one at bar." Taxpayer's Br. at 12. Ignoring the historical significance of the *Raymond* line of cases, this statement confuses the classification of taxpayers on the basis of corporate nature, with the implementation of a tax system which sometimes overassesses property. The taxpayer's argument simply proves too much. If accepted, it would justify an equal protection claim for every overassessment, since no tax system is perfect, and all tax systems worthy of the name are deliberately and systematically implemented.

More than 100 years ago the Court observed in an Illinois tax case—". . . (P)erfect equality and perfect uniformity of taxation as regards individuals or corporations, or the different classes of property subject to taxation, is a dream unrealized." *State Railroad Tax Cases*, 92 U.S. 575, 612 (1875).

In a similar vein, the Court observed a century later, in *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), that:

> "No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex area in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause.

San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 41 (1973). While *Rodriguez* unquestionably deals with the broader question of tax source classifications, the underlying theme is consistent.

In the final analysis the taxpayer's complaint shows an ongoing tax dispute between the collector and the taxpayer based on an alleged overassessment resulting from implementation of the Revenue Act. That, without more, is not enough to state a federal constitutional claim. *Snowden*, 321 U.S. 1, 9 (1944).

III.

THE ILLINOIS STATUTORY REAL ESTATE TAX REMEDY IS PLAIN, SPEEDY AND EFFICIENT, DESPITE ITS FAILURE TO PROVIDE PREJUDGMENT INTEREST. (Reply to Taxpayer's Argument III, Br. at 13-31.)

The taxpayer argues that the Illinois statutory remedy for challenging taxes in alleged overassessment cases is not "plain, speedy, and efficient" because the statutory remedy fails to award prejudgment interest* on refunds.

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* The taxpayer suggests that *Neubert v. Foxworthy*, 71 Ill. App. 3d 438, 389 N.E.2d 898 (4th Dist. 1979) indicates that the taxpayer is denied usual post-judgment interest authoriz-

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Moreover, it is clear that the taxpayer has, by this argument, focused only upon the state statutory remedy.* This truncated argument incorrectly avoids consideration of state and federal §1983 damage remedies available to the taxpayer. See Arg. IV, *infra* at 18-20. Furthermore, since the taxpayer's claim is not premised upon diversity or federal question jurisdiction, but rather upon the civil rights act, the more appropriate analysis is that directed towards cases dealing with §1983 claims.

As we noted in our opening brief (Pet. Br., at 40), the taxpayer's claim that the Illinois statutory system is not plain, speedy and efficient due to the denial of prejudgment interest, necessarily creates the issue of whether or not prejudgment interest on tax refunds is an element of

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ed under Illinois law. Ch. 74, par. 3, Ill. Rev. Stat. 1979. However, *Neubert* is authority for the Fourth Illinois Appellate District only, whereas the taxpayer's property lies in the First District, near Chicago. The Illinois Supreme Court has not had the last word on this issue because the taxpayer in *Neubert* failed to petition the Supreme Court of Illinois for leave to appeal.

* The Amicus, Cook County Legal Assistance Foundation, asserts in sum, "This amicus brief is made to emphasize that the current limited state remedy in Cook County is very cumbersome and is unusable by an individual taxpayer without an attorney knowledgeable in the complex tax review system used only in Cook County." Amicus Br. at 5. Unfortunately, in a county the size of Cook County (the second largest in the country) even despite the best efforts of the Illinois General Assembly and local assessment officials to accommodate the needs of homeowners, "the procedures for mass assessment and collection of state taxes and for administration and adjudication of taxpayers disputes with tax officials are generally complex and necessarily designed to operate according to established rules . . . If federal declaratory relief were available to test state tax assessments, state tax administration might be thrown into disarray, and taxpayers might escape the ordinary procedural requirements imposed by state law." *Perez v. Ledesma*, 401 U.S. 81 at 127 n. 17 (1971).

damages in over-assessment cases. If there is no legal right to prejudgment interest on a refund, then it would be difficult to see the inadequacy of the Illinois statutory remedy. The taxpayer, however, has ignored this basic premise and, rather, has argued cases (Resp. Br., at 19-27) which we have distinguished in our opening Brief. (Pet. Br., at 47-49). Indeed, the taxpayer does this notwithstanding her admission that the Court has not yet decided whether the failure of a state system to award prejudgment interest on a tax refund renders that system inadequate within the meaning of 28 U.S.C. §1341. (Resp. Br. at 19, citing *Department of Employment v. United States*, 385 U.S. 355, 358 (1966).)

In this context the collector cited the majority rule, followed in nineteen state and territorial jurisdictions, which holds that prejudgment interest on state and local tax refunds is not warranted if there is no statutory authorization for such interest. (Pet. Br. at 41-43) It is this majority rule which, we submit, should be considered if the Court should choose to answer the issue specifically left open in the *Department of Employment* case.

The taxpayer also criticizes the collector's reliance on *Boott Cotton Mills v. Lowell*, 159 Mass. 383, 34 N.E. 367 (1893) (no interest on overassessments, but interest on void assessments) and *Brodsky v. Murphy*, 25 N.Y.2d 518, 255 N.E.2d 700 (1969) (no interest on over-assessments, but interest on unconstitutional and void taxes). The taypayer states:

> . . . When the taxing statute involved is wholly void or unconstitutional or the challenged tax has been imposed on exempt property those cases . . . permit interest without statutory authorization. (Resp. Br. at 28.)

However, in Illinois if a tax is void or is levied on exempt property, one is entitled to injunctive relief against

it. See: *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 306 N.E.2d 299 (1973). Accordingly there is no issue as to prejudgment interest in those situations since equitable relief is available, as in Illinois.

In a like manner, the dicta relied on by the taxpayer in *Proctor & Gamble Distrib. Co. v. Sherman*, 2 F.2d 165 (S.D. N.Y. 1924), *Hopkins v. Southern California Telephone Co.*, 275 U.S. 393 (1928), and *Nutt v. Ellerbe*, 56 F.2d 1058 (E.D. S.C. 1932), is unpersuasive. Those cases were not overassessment cases. Rather, the taxpayers in those cases challenged the authority to levy the entire tax. Under Illinois law, however, equitable relief could issue to enjoin illegal taxes such as those. Accordingly, the cited cases are irrelevant to the case at bar because Illinois provides equitable relief where the tax is unauthorized by law.

Moreover, the collector has a claim of right to the taxes in issue by way of his lien even prior to the issuance of the tax bills.* This lien and claim of right to the tax funds is not affected until the court adjudicates the correctness of the assessment. See *Morton Grove Park Dist. v. American National Bank*, 78 Ill. 2d 353, 364-365, 399 N.E.2d 1295 (1980). Accordingly, since the collector has a claim of right to the tax funds while they are in litigation, there is no due process issue in question. Moreover, the lien or claim of right created by the statute extinguishes, *pro tempore*, the ownership interest upon which the taxpayer must premise the right to interest. Clearly the taxpayer has no interest in prepaid taxes un-

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* Ill. Rev. Stat. 1977, ch. 120, par. 697 provides, "The taxes upon real property . . . shall be a prior and first lien upon such real property, superior to all other liens and encumbrances, from and including the first day of January in the year in which the taxes are levied until the same are paid or until the real property is sold pursuant to this Act. . . ."

til such time as an overassessment is judicially established.

We accordingly conclude that the Illinois statutory remedy which denies prejudgment interest on tax refunds does not render that remedy inadequate within the meaning of §1341.

IV.

THE TAXPAYER HAS FAILED TO DEMONSTRATE THAT AN ILLINOIS §1983 ACTION WOULD NOT PROVIDE A PLAIN, SPEEDY AND EFFICIENT REMEDY FOR HER FEDERAL CLAIMS. (Reply to Taxpayer's Argument IV, Br. at 31-40.)

Introduction

The collector has argued in his opening brief that the ability of the taxpayer to challenge her real estate tax assessment by a §1983 action in the Illinois courts precludes federal jurisdiction. This Court has fully approved the power of the state court to entertain state §1983 actions. *Martinez v. California*, ... U.S. ....., 100 S.Ct. 553 (1980); *Maine v. Thiboutot*, ... U.S. ....., 100 S.Ct. 2502 (1980). The great weight of authority in the state courts is consistent with this holding,* and the

* In addition to those cases set out at 29-30 of the collector's opening brief, the following can be included: Supporting State Jurisdiction of §1983 actions, Alaska-*Tobeluk v. Lind*, 589 P.2d 873 (Alaska 1979); Colorado-*Silverman v. University of Colorado*, 555 P.2d 1155 (Colo. 1976); Connecticut-*Vason v. Cerrano*, 330 A.2d 98 (Conn. Sup. 1974); Indiana-*Reilly v. Robertson*, 360 N.E.2d 171 (Ind. 1977); Missouri-*Shapiro v. Columbia Union National Bank Co.*, 576 S.W.2d 310 (Mo. 1978); New Hampshire-*M.B.C., Inc. v. Engel*, 397 A.2d 636 (N.H. 1979); New Jersey-*Endruss v. Brookdale Community College*, 364 A.2d 1080 (N.J. Super. App. Div. 1976); North Dakota-*Falkenstein v. City of Bismark*, 268 N.W.2d 787 (N.D. 1978); Pennsylvania-*Commonwealth ex rel. Saunders v. Creamer*, 345 A.2d 702 (Pa. 1975); Utah-*Kish v. Wright*, 562 P.2d 625 (Utah 1977); Wyoming-*Board of Trustees v. Holso*, 584 P.2d 1009 (Wyo. 1978).

taxpayer has not attempted to distinguish this obvious trend in civil rights law. Instead the taxpayer has questioned the specific availability of §1983 to reach the case at bar. Premising her argument primarily on *Hillsborough v. Cromwell*, 326 U.S. 620 (1946), the taxpayer contends that (1) the collector's direct precedent is distinguishable; (2) that it is uncertain whether Illinois is "mandated" to accept §1983 tax claims; (3) that it is uncertain whether Illinois will apply federal equity law as against prior decisional law; (4) and that *Trainor v. Hernandez*, 431 U.S. 434 (1977) does not require abstention in the case at bar.

At the outset, it should be clear that if the taxpayer's right to state relief is uncertain, that uncertainty is of her own making. The difficulty surrounding the §1983 question has arisen precisely because the taxpayer has failed to file her §1983 claims in state court. Thus, not having exposed her federal claims under §1983, she can hardly say that Illinois will not hear them. There is no dispositive state precedent against her position, as there was against the taxpayer in *Hillsborough*, where the Court had the benefit of a specific holding by the highest state court on the precise issue necessary for deciding the §1341 issue. Here, as in *28 East Jackson Enterprises v. Rosewell*, 63 Ill. App. 3d 880, 380 N.E.2d 895 (1st Dist. 1978), a taxpayer attempts to take ". . . advantage of an unresolved question of Illinois law, a gray area of Federal-State relations, and the delays inherent in the judicial process to delay the sale of its tax delinquent property until after the following year's taxes have also become delinquent, after which a new suit is filed raising the same precise issues and beginning the process anew." (63 Ill. App. 881-82, 380 N.E.2d at 896).*

* This same pattern appears in the case at bar where the taxpayer has filed an identical suit challenging her 1978 tax-

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The taxpayer asserts that *Lakefront Realty v. Lorenz*, 19 Ill. 2d 415, 167 N.E.2d 236 (1960) and *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 306 N.E.2d 299 (1973) demonstrate antipathy to her underlying claim for prejudgment interest upon tax refunds. However she has not presented that matter as a §1983 claim despite the fact that Illinois equity law is flexible, see *Hoyne v. Hare*, 60 Ill. 2d 84, 322 N.E.2d 833 (1974), and that the Illinois Supreme Court will not tolerate the taking of property without due process of law. *Morton Grove Park District v. American National Bank*, 78 Ill. 2d 353, 399 N.E.2d 1295 (1980). One might wonder why counsel as obviously resourceful and ingenious as taxpayer's would not present those claims to Illinois courts. The answer is, of course, that a litigation strategy designed to rely on *Hillsborough* "uncertainty" must avoid resolution of developing Illinois law lest the predicate of the argument be destroyed.

The taxpayer urges that the federal district court cases (*Horn*, *Green* and *Advertiser Co.*) cited in the collector's initial brief at 30 are distinguishable because (1) ". . . none of these cases justifies its holding with any detailed analysis of the relationship between §§1341 and 1983. 604 F.2d at 537;" (2) and that other declaratory remedies were available in these cases. What the taxpayer fails to note is that no federal court, save that

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es. *LaSalle Nat. Bk. v. Rosewell*, 79 C 4864. The collector demanded and was accorded a full preliminary injunction hearing on the matter, but, because the case at bar is still unsettled, the district court has continued a temporary injunction generally. Any resemblance between *28 East Jackson* and *LaSalle* is not coincidental since each was represented by the same counsel. The pyramiding of injunctions in *28 East Jackson* and the case at bar appears to be unavoidable as long as taxpayer and collector steadfastly adhere to their respective positions.

whose decision is here under review, has held that a state civil rights action fails to meet the requirements of §1341. Moreover, we have earlier demonstrated that §1341 was impelled to prevent abuse of diversity jurisdiction, not federal question jurisdiction. There is nothing in §1983, particularly after *Martinez* and *Thiboutot* which guarantees litigants a federal forum in tax cases. Even if one were to stop short of such a position, when §1341 is read together with §1983, it seems clear enough that the policy of each statute is forwarded by a state §1983 action. Again, the taxpayer has cited no contrary Illinois precedent.

Similarly, whether or not Illinois must accept jurisdiction of a §1983 tax claim is only a question here because the taxpayer failed to raise it in the state court. It is clear that *Martinez* and *Thiboutot* bind the courts of Illinois under the Supremacy Clause. Even before the decision of those cases, the Illinois Appellate Court in taxpayer's district in *Alberty v. Daniel*, 25 Ill. App. 2d 791, 323 N.E.2d 110 (1st Dist. 1974) ruled that §1983 actions could be brought in Illinois courts. In short, *Hillsborough* requires more than the conjured "uncertainty" of a taxpayer who has deliberately withheld her claims from the state court.

The taxpayer also maintains that there is doubt or uncertainty whether the courts of Illinois will apply federal equity law in §1983 cases. The taxpayer hypothesizes that the Illinois courts may not "feel bound" by such federal principles. Having said as much, the taxpayer raises no precedent to support this baseless affront to the judiciary of a state whose courts possess a heritage of respect for the constitution and laws of the United States.

In *People ex rel. Korzen v. Fulton Market Cold Storage Company*, 62 Ill. 2d 443, 343 N.E.2d 450 (1976), cited by

the taxpayer as an example of Illinois courts' reticence to apply appropriate federal law, no question of the relationship between state exhaustion requirements and §1983 claims was presented because the appellate court decision there under review was premised solely on state grounds. Similarly, in *28 East Jackson Enterprises, Inc. v. Rosewell*, 65 Ill. 2d 420, 358 N.E.2d 1139 (1976) the taxpayer refused to present its federal claims to the Illinois courts for determination. Far from demonstrating "antipathy . . . to the imposition of federal jurisprudence upon it. . . .", that case stands as a rejection of a taxpayer's facile attempt to manipulate federal and state courts in a manner which threatened to bring embarrassment to both. It is precisely at this point, where "the role of the Illinois judicial system closely resembles that of a master in chancery for the federal district court" (65 Ill. 2d at 425), that vital considerations of federalism, comity and equitable restraint are implicated.

Finally, the taxpayer's attempt to rebut the collector's *Younger-Trainor* analysis is very seriously flawed. In her *Younger* analysis, the taxpayer states, "*Younger* abstention has no place where, as here, the federal constitutionality of a state law is not under attack." (Br. at 37). However, as we have demonstrated in Argument II heretofore, a claim of tax discrimination under *Snowden* must assert that the state, in effect, has passed an unconstitutional classification law by its purposeful and intentional assessment action, ". . . so that the practical effect of the official breach of law is the same as though the discrimination were incorporated in and proclaimed by statute." *Snowden v. Hughes*, 321 U.S. 1, 9 (1944). Therefore, if the taxpayer's complaint does state a cognizable claim of tax discrimination, then it surely presents a *Younger* challenge.

Proceeding with her *Younger* analysis, the taxpayer maintains that ". . . no unsettled questions of state law are involved . . .", citing the *Lakefront* and *Clarendon* holdings on the question whether Illinois tax refund statute's failure to authorize prejudgment interest renders it an inadequate remedy. This position has been treated in Argument III hereinbefore, and is a separate question. The taxpayer has subtly shifted her focus from the §1983 remedy onto the statutory remedy. But the real question here is whether comity requires that Illinois courts be permitted to determine the scope of a state §1983 action. That question is undecided by Illinois courts because the taxpayer has chosen instead to litigate in federal court. The collector submits that it is more sensible to allow the state courts the necessary freedom to shape a relatively new state court tax remedy under §1983, than to run the risk of turning even the highest court of Illinois into a master in chancery for a district court judge.

Third, the taxpayer maintains that ". . . there is no prior pending state suit . . ." (Br. at 38) with which a federal injunction will interfere. This argument fundamentally misapprehends the importance of the tax sale proceedings authorized by state statute. Moreover, it seems clear enough from the pleadings (A. 10) that interference with the proposed sale is precisely what the taxpayer seeks to achieve by her federal injunctive suit.*

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* The taxpayer confuses *Younger* abstention with *Pullman* abstention when she argues that she should be permitted to return to federal court ". . . in the event the Illinois courts decline to grant adequate relief." Br. at 38 n. 36. The cases she cites there (*England, Sachs,* and *Mr. Boston*) deal with the question of presentation of separate state and federal claims. §1341 requires the taxpayer to present all her claims in the state court. The Seventh Circuit has held that an "England"

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It is plain that the taxpayer's suit would subvert a fundamental state objective within the meaning of *Trainor v. Hernandez*, particularly if injunctions were freely granted upon the basis established by the court below.

In a similar vein, though in a different section of her brief, the taxpayer argues that she contests only the ". . . discriminatory portion of her tax bill. . . .", and "the flow of lawful revenue represented by the proper portion of the tax would continue uninterrupted." Br. at 25 n. 20. This contention begs the question, because it is for the courts, not the taxpayer, to decide whether the allegations of a complaint, assuming a claim is stated, warrant relief, and to decide how much of the tax payment, if any, should be refunded.

The taxpayer argues that "The Tax Injunction Act subsumes the policy concerns behind the *Younger* decision, *Id.* at 444 n. 8, so that a demonstration that the Illinois remedy is not plain, speedy and efficient for purposes of §1341 suffices to establish the inapplicability of *Younger*," Br. at 39. This position conflicts with the legislative intent of the tax injunction act which sought to prevent out-of-state corporations from tying up state taxes in federal courts when ". . . no federal question [is] involved . . . " [81 Cong. Rec. 1417 (1937), Remarks of Senator Bone, a co-sponsor of the bill.] Where the extension of federal jurisdiction, like §1983, comes into conflict with important state court proceedings, the broader concerns of comity and equitable restraint set out in *Younger* and *Trainor* come into

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reservation is not possible in a §1341 tax case. *28 East Jackson Enterprises v. Cullerton*, 551 F.2d 1093 (7th Cir. 1977) *cert. denied*, 434 U.S. 835.

play. Moreover, as the Court pointed out in *Trainor*, 431 U.S. 434, 441 (1977) the question is not only whether available remedies at law in federal court would bar injunctive relief, but also whether there are remedies available in the pending state proceeding. However, in Illinois tax cases where the statutory remedy is, as here, available to the taxpayer because she claims "to be able financially to pay the tax and sue for a refund . . ." (A. 9), the taxpayer cannot suffer loss of the property. While the taxpayer may suffer ". . . substantial loss, expense and burden," that sort of monetary injury is remediable by the federal §1983 damage remedy recognized by the Seventh Circuit in *Fulton Market Cold Storage Co. v. Korzen*, 528 F.2d 1071 (7th Cir. 1978), *cert. denied* 439 U.S. 1121 (1979). This Court has held that monetary injury (here primarily prejudgment interest claimed by the taxpayer) which is compensable in a damage action, is not irreparable injury sufficient to support an injunction. *Sampson v. Murray*, 415 U.S. 61, 88-92 (1974).

In final summary, if the history of real estate tax litigation in Illinois is any guide, then the Court can assume that taxpayers will exploit fully the opportunity for delay and confusion offered by anticipatory litigation of state tax valuations. See *People ex rel. Sweitzer v. Orrington Co.*, 360 Ill. 289, 293, 195 N.E. 642 (1935); *Clarendon Associates v. Korzen*, 56 Ill. 2d 101, 106, 306 N.E.2d 299, 302; *28 East Jackson Enterprises v. Rosewell*, 63 Ill. App. 3d 880, 881-82, 380 N.E.2d 895, 896 (1st Dist. 1978). Moreover, if allegations as vague as those set out in the complaint are sufficient to state a claim (contrary to the collector's position, Argument II, supra), then any taxpayer harboring a valuation dispute against the assessor may file an injunction claim in federal court with the hope that the threatened delay may prove a valuable bargaining chip in settlement discussions with county tax officials. For this very reason the

Clarendon court limited injunctive relief in real estate tax valuation cases to those in which a traditional equitable ground was combined with unavailability of the statutory remedy. The collector suggests that the §1983 civil rights damage remedy recognized by the Seventh Circuit in *Fulton Market* (and, therefore, applicable in a state court §1983 action by virtue of the Supremacy Clause) provides the federal analog to the Illinois remedy in cases where injunctive relief is sought in federal court. Where, as here, the federal damage remedy is available to the taxpayer, and where the taxpayer has the ability to pay the tax, then federal injunctive relief should be denied on the authority of *Tully v. Griffin, Inc.*, 429 U.S. 68 (1976) and *Trainor v. Hernandez*, 431 U.S. 434 (1977).

CONCLUSION

For the foregoing reasons, the collector respectfully submits that the opinion and judgment of the Court of Appeals should be reversed, and the order of the District Court affirmed.

Respectfully submitted,

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